MAR 29 1943
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 867

WILLIAM E. ANDREWS,

Petitioner,

vs.

HOTEL SHERMAN, INC., a Delaware Corporation, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR A WRIT OF CERTIORARI WITH SUPPORTING BRIEF AND ARGUMENT.

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PETITION.

Your petitioner, William E. Andrews, by Charles R. Aiken, his attorney, respectfully represents unto this Court as follows:

The Matter Involved.

Judgment on a verdict awarding damages to petitioner for malicious prosecution, abuse of process, false arrest and imprisonment, and civil conspiracy was rendered by the District Court for northern Illinois on November 20, 1942 (R. 2, 33). Seventy-seven days thereafter, on February 5, 1943, certain of the defendants, respondents here, filed their notice of appeal from such judgment (R. 3). Also on that date, which was the sixty-sixth day exclusive of Sundays after entry of judgment, respondents moved for the issuance of a writ of *supersedeas* staying execution of the judgment (R. 4, 10). The application was denied by the trial court upon the ground that under the statute it lacked jurisdiction to allow a *supersedeas* where the appeal had not been perfected within sixty days from entry of the judgment complained of (R. 10-12, 17).

Thereupon, respondents prayed an appeal from the order denying a *supersedeas*, and such appeal was allowed (R. 12). Thereafter, in the Circuit Court of Appeals for the Seventh Circuit, respondents' request for a *supersedeas* was renewed upon the ground the rules of this Court regulating procedure had repealed the Judicial Code defining the court's jurisdiction to grant the writ (R. 23-27). The reviewing court after hearing, on February 15, 1943, overruled the trial court and ordered that the writ of *supersedeas* should issue (R. 42).

The ruling of the Circuit Court of Appeals awarding a *supersedeas* upon an appeal which had been perfected more than sixty days after judgment, Sundays excluded, is the decision sought to have reviewed by this petition.

The Basis of This Court's Jurisdiction.

This Court's jurisdiction is invoked pursuant to Section 240a of the Judicial Code (28 U. S. C., sec. 347a). The judgment of the trial court was rendered February 8, 1943 (R. 17), and the opinion of that court disclosing the grounds for its ruling appears during the hearing of the motion for allowance of the writ (R. 12), where it was held as follows:

> "The Court: Well, that language is very direct. There isn't any difference between a writ of error and appeal. It says sixty days. Not even the Supreme Court has any power. So, I do not think I have any power to grant a *supersedeas* after the sixty days.
>
> "Mr. Romano: Seventy-six days have gone by.
>
> "The Court: That is correct. So, I can not have this act as a *supersedeas.*"

The Circuit Court of Appeals in overruling the trial court, on February 15, 1943, merely ordered issuance of the writ of *supersedeas* without stating any reasons for its ruling (R. 42). Thereafter, petitioner requested the Circuit Court of Appeals to state the grounds for its judgment granting the *supersedeas* (R. 47), in order that he might comply with Rule 12(1) of this Court on this application, which request for an opinion was summarily denied on February 18, 1943 (R. 50). The only inference to be drawn from the record, therefore, in view of such refusal to disclose the basis for its ruling, is that the Circuit Court of Appeals sustained respondents' contentions advanced in support of their application for issuance of the writ (R. 24-25), *viz.*: that Section 874 of Title 28, limiting the courts' jurisdiction to grant a *supersedeas* to those appeals perfected within sixty days after judgment, is in conflict with the Federal Rules of Civil Procedure, Section 62(d), which provides that a bond on appeal may be given at the

time the appeal is perfected or afterward, and that, therefore, because of such conflict, the act of Congress defining the courts' jurisdiction was repealed by operation of law.

The Question Presented.

The sole question presented by this petition is: Does the act of Congress authorizing promulgation of the new Federal Rules of Civil Procedure (28 U. S. C., secs. 723b and 723c), and providing that "all laws in conflict (with such new rules) shall be of no further force or effect," operate to repeal a section of the Judicial Code (Title 28, sec. 874) defining the limits of the courts' jurisdiction to issue writs of *supersedeas?* Or, more specifically stated, does Section 62(d) of the Federal Rules, providing that a bond on appeal may be filed with the notice of appeal or afterward, conflict with and thereby repeal Section 874 of the Judicial Code (Title 28), providing that the power of the courts to grant a *supersedeas* is limited to appeals which have been perfected within sixty days after the judgment complained of?

The Reasons for Allowance of the Writ.

Special and important reasons are present which justify a review of this cause. The decision of the Circuit Court of Appeals in question is founded upon an interpretation of the new Federal Rules of Civil Procedure, which, so far as we can ascertain, never before has been decided. Certainly, the question presented has not been passed on by this Court. Whether the new Rules have enlarged the jurisdiction of the courts to grant writs of *supersedeas* obviously is an important question of federal law which should be settled by this Court.

Apart from the novel question of construction involved, the decision of the Circuit Court of Appeals also amounts

to a determination of a federal question in a way probably in conflict with applicable decisions of this Court, and is in conflict with the decisions of other Circuit Courts of Appeals on the same matter, within the meaning of Rule 38(5b) of this Court.

Prayer.

Wherefore, your petitioner prays that the writ of *certiorari* may be awarded in this cause to review the decision of the Circuit Court of Appeals for the Seventh Circuit rendered February 15, 1943, herein, and that upon such review the judgment granting a *supersedeas* may be reversed.

WILLIAM E. ANDREWS,
Petitioner.

By CHARLES R. AIKEN,
Attorney for Petitioner.

MICHAEL A. ROMANO and
AIKEN, MCCURRY, BENNETT & CLEARY,
Attorneys for Petitioner.